

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**LIQUIDATOR'S MOTION FOR APPROVAL
OF SETTLEMENT WITH CLIFTON MARSHALL**

Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust Company and Aegean Scotia Holdings, LLC ("Noble Trust" and "Aegean Scotia," respectively), by his attorneys, the Office of the Attorney General and Sheehan Phinney Bass + Green, Professional Association, moves for the entry of an order approving a Settlement Agreement and Mutual Release by and between the Liquidator and Clifton Marshall (the "Settlement Agreement").¹ This Motion is supported by the Affidavit of Robert A. Fleury dated February 21, 2014 (the "Fleury Affidavit") and the Confidential Affidavit of Robert Fleury dated February 21, 2014. In support of this Motion, the Liquidator states as follows:

1. In 2003, Noble Trust was organized and chartered under the laws of the State of New Hampshire as a non-depository banking corporation, and subject to regulation by the New Hampshire Banking Department (the "Banking Department").
2. As a result of irregularities discovered by the Banking Department's 2008 examination of Noble Trust, on February 11, 2008, Commissioner Peter Hildreth commenced a

¹ In accordance with the Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012, a redacted copy of the Settlement Agreement is attached hereto as Exhibit A and the unredacted Settlement Agreement has been submitted to the Court with the Confidential Affidavit of Robert A. Fleury dated February 21, 2014. Parties wishing to review the unredacted Settlement Agreement may do so by contacting the Office of the Liquidator and following the Court approved procedures, including the execution of a confidentiality agreement.

liquidation proceeding by filing a Verified Petition for Liquidation (the “Liquidation Petition”) in this Court, seeking the appointment of a liquidator for Noble Trust pursuant to RSA 395:1, as well as related injunctive relief against Noble Trust pending the Court’s ruling on the Liquidation Petition (the “Liquidation Proceeding”).

3. On March 27, 2008, this Court entered an order (the “Liquidation Order”) appointing Commissioner Hildreth as liquidator of both Noble Trust and its parent company, Aegean Scotia. The Liquidator is the duly appointed successor liquidator of Noble Trust and Aegean Scotia by order of this Court dated February 1, 2013.

4. Colin P. Lindsey (“Lindsey”) was the president of Noble Trust and chairman of its board of directors. Fleury Affidavit, ¶ 3. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. Id. Noble Trust’s clients’ funds were maintained as individual management accounts or individual retirement accounts established for the benefit of those clients, or held in charitable trusts for which Noble Trust clients were both the grantors and beneficiaries during their lives. Id.

5. Between June 2004 and September 2007, Noble Trust (acting as a trustee under its clients’ trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC (“Sierra”). Fleury Affidavit, ¶ 4. Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to Noble Trust’s clients. Id.

6. Instead, Lindsey attempted to conceal the loss from Noble Trust’s clients and other parties in interest (including the Banking Department) through a fraudulent and illegal Ponzi scheme. Fleury Affidavit, ¶ 5. In 2006 and 2007, Sierra stopped paying monthly “interest” payments to Noble Trust, which had until that time, been paid to Noble Trust clients invested in

Sierra. Id. To make the monthly payments its clients were accustomed to, Noble Trust began using, among other sources, money from newer investors to make the monthly payments. Id. Noble Trust also used funds from newer investors to repay older investors' principal investment in Sierra. Id.

7. One of the methods Lindsey used to try to generate the necessary income to conceal the Sierra losses was by dealing in certain high-premium, high-value life insurance policies. Fleury Affidavit, ¶ 6. Lindsey hoped (1) to receive large commissions that insurers paid to brokers or agents that successfully sent the insurers an applicant for which a policy was issued, and (2) to sell the insurance policies on the secondary market. Id. To succeed in this plan, Lindsey needed a ready source of applicants for insurance policies who would agree in advance to sell their interests in the policies to Noble Trust. Id. Lindsey turned to a network of people, including defendant Marshall, to find such applicants. Id.

8. The Liquidator is in the process of marshaling the assets of Noble Trust in order to maximize the value of the liquidation of Noble Trust for the benefit of creditors. Among his other powers, the Liquidator is authorized to assert any claims that may be brought by or on behalf of Noble Trust or Aegean Scotia.

9. The Liquidator commenced litigation in this Court against various individuals and entities involved in the insurance policy scheme, including Clifton Marshall and other defendants, in Hildreth v. Marino et al., Docket No. 217-2010-CV-00175 (the "Action"). Fleury Affidavit, ¶ 8. Pursuant to the Action, the Liquidator alleges certain unjust enrichment, Racketeer Influenced and Corrupt Organizations Act, civil conspiracy, aiding and abetting a breach of fiduciary duty, and indemnification claims against Marshall and other defendants who,

among other things, encouraged and assisted prospective insurance applicants to falsify financial and other application materials in order to qualify for the insurance policies. Id.

10. The Liquidator has reached a settlement with defendant Clifton Marshall. Under the Settlement Agreement, Marshall has paid a confidential sum to the Liquidator (the “Settlement Funds”), which the Liquidator has agreed to hold in an escrow account pending approval of the Settlement Agreement by this Court. Upon final Court approval, the Settlement Funds will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate.

11. Pursuant to the Settlement Agreement, the Liquidator and Marshall shall mutually release each other from any and all claims, including those that arise out of or relate in any way to the Action, the claims in the Writ of Summons, or related transactions. Without limiting the generality of the release, Marshall specifically waives any and all claims or proofs of claims (and the right to file or amend any claims or proofs of claims) in the Liquidation Proceeding.

12. The Liquidator believes the Settlement Agreement is fair, reasonable and adequate, and is the result of arms-length negotiations. In order to avoid the additional time, expense, and resources that continued litigation of the Action and any subsequent collection proceedings against Marshall would undoubtedly consume, and the attendant uncertainty of outcome associated with such litigation, the Liquidator negotiated the Settlement Agreement, which by its terms does not become effective unless and until it is approved by this Court.

13. The Settlement Agreement maximizes the value of the liquidation of Noble Trust by relieving further costs and potential risk of continued litigation with Marshall, and provides for, among other things, (i) payment of the Settlement Funds, eliminating any collection risk if the Liquidator were compelled to engage in further litigation to enforce any judgments against

Marshall, and (ii) release of any and all of the claims in the Liquidation Proceeding that Marshall filed or could have filed.

14. The Liquidator therefore believes that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlement resolves the pending disputes with Marshall in the Action on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

15. Accordingly, the Liquidator believes that approval of the Settlement Agreement is in the best interests of Noble Trust, its creditors, and all parties in interest. See In re Liquidation of The Home Ins. Co., 154 N.H. 472, 489-90 (2006).

16. Marshall assents to the relief sought herein.

WHEREFORE, the Liquidator requests that the Court (i) enter an order, in substantially the same form submitted herewith as Exhibit B, granting the Motion and approving the Settlement Agreement, and (ii) grant such other and further relief as is just.

Respectfully submitted,

Dated: February 27, 2014

GLENN A. PERLOW, BANK COMMISSIONER OF THE
STATE OF NEW HAMPSHIRE, AS LIQUIDATOR OF
NOBLE TRUST COMPANY

By his attorneys,

ANN M. RICE, DEPUTY ATTORNEY GENERAL

 *by permission AME*

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EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release of claims (hereinafter "Agreement") is made and entered effective June 13, 2013, by and between Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, as Successor Liquidator for Noble Trust Company and Successor to the Rights of Balcarres Group, LLC (hereinafter the "Liquidator") and Clifton Marshall (hereinafter "Marshall") (collectively, the Liquidator and Marshall are referred to herein as the "Settling Parties").

1. Recitals. This Agreement is made with reference to the following facts:

There is now pending in the Merrimack County Superior Court a civil action involving, among others, the Settling Parties (hereinafter "the Litigation") brought by the Liquidator. The action is entitled Peter C. Hildreth v. Gerald Marino et al., Docket No. 217-2010-CV-00175. Marshall is a defendant in the Litigation.

Marshall has demonstrated to the Liquidator that he has an inability to pay more than [REDACTED] in connection with resolving the Litigation.

The Settling Parties desire to fully and finally compromise and settle the above controversies and all other potential controversies related in any way to any and all claims either party has against one another as of the date of this Agreement.

NOW, THEREFORE, the Settling Parties mutually agree as follows:

2. Payment. Upon execution of this Agreement, Marshall shall cause the sum of [REDACTED] to be paid to the Liquidator in full and final settlement of all claims related to or arising from the Litigation. The Liquidator will have that amount held in escrow until this Agreement is approved by the Court, as set forth in paragraph 8 below.

3. Release of Marshall by the Liquidator. For good and valuable consideration, the receipt of which is hereby acknowledged, the Liquidator does hereby release, remise and forever discharge Marshall, his agents, employees and insurer(s), from any and all claims, causes of action, rights, obligations, debts, liabilities, accounts, damages, contracts, losses, injuries and expenses of every kind and nature whatsoever by statute or at common law, whether known or unknown, foreseen or unforeseen, patent or latent, suspected or unsuspected, which the Noble Trust Company and Balcarres Group LLC previously had, currently have or may have (from the beginning of the world through the date of the signing of this Agreement), in anyway arising from, relating to, or based upon any cause, matter or reason whatsoever, including, but not limited to, any and all claims, causes of action, rights, obligations, debts, liabilities, liens, damages, losses and expenses arising from, relating to or in any manner connected with, directly or indirectly, the Litigation and/or with respect to the facts and matters set forth in, or which were capable of assertion in, the Litigation except as to the rights and agreements set forth in this Agreement.

4. Release of the Liquidator by Marshall. For good and valuable consideration, the receipt of which is hereby acknowledged, Marshall does hereby release, remise and forever

discharge the Liquidator, the Liquidation Estate, Noble Trust Company, Balcarres Group LLC, Aegean Scotia, and any of their agents, employees and insurer(s), from any and all claims, causes of action, rights, obligations, debts, liabilities, accounts, damages, contracts, losses, injuries and expenses of every kind and nature whatsoever by statute or at common law, whether known or unknown, foreseen or unforeseen, patent or latent, suspected or unsuspected, which Marshall previously had, currently has or may have (from the beginning of the world through the date of the signing of this Agreement), arising from, relating to, or based upon any cause, matter or reason whatsoever, including, but not limited to, any and all claims, causes of action, rights, obligations, debts, liabilities, liens, damages, losses and expenses arising from, relating to or in any manner connected with, directly or indirectly, the Litigation and/or with respect to the facts and matters set forth in, or which were capable of assertion in, the Litigation except as to the rights and agreements set forth in this Agreement.

Without in any way limiting the generality of the foregoing, Marshall specifically waives any and all claims or proofs of claims (and the right to file or amend such claims or proofs of claims) in the matter docketed in the Merrimack Superior Court as "In the Matter of the Liquidation of Noble Trust Company" (Case No. 08-E-0045) (the "Liquidation Proceeding"). Marshall further agrees not to object to any settlement between the Liquidator and any other party that pertains to any insurance policy for which Marshall was the insured.

5. Subsequent Discovery of Different or Additional Facts. The Settling Parties acknowledge that they are aware that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the claims, causes of action, rights, obligations, debt, liabilities, accounts, liens, damages, losses and expenses herein released, and each agrees that the within release shall be and remain in effect in all respects as a complete and general release as to all matters released herein, notwithstanding any such different or additional facts.

6. No Assignment of Released Claims. Each of the Settling Parties represents and warrants to the other that they are the owner of and have not hereto assigned or transferred or purported to assign or transfer to any person, firm, or corporation any claim, demand, right, damage, liability, debt, account, action, cause of action, or any other matter herein released.

7. Denial Of Liability. The giving of the consideration specified herein effects the settlement of the matters released herein. Neither the giving of said consideration or anything contained herein shall be construed as an admission by any party to this Agreement, or their heirs, assigns, successors, representatives, agents, officers, directors, or shareholders of the validity of the claims or defenses of any other party to this Agreement.

8. Court Approval. The Settling Parties acknowledge and agree that this Agreement will become void unless it is approved by the Court overseeing the Liquidation Proceeding. Therefore, after this Agreement is fully executed and Marshall pays the [REDACTED] contemplated by paragraph 2 above, the Liquidator will file a Motion to Approve this Settlement in accordance with such confidentiality procedures as outlined in paragraph 9 below. Marshall hereby indicates his assent to such Motion to Approve this Settlement and agrees that, to the extent necessary, he will cooperate in preparing any supporting pleadings and presenting argument. Should the Court

deny the Motion to Approve, this Agreement shall be void and have no further force and effect and the Liquidator shall return the [REDACTED] settlement payment to Marshall.

9. Confidentiality. The Settling Parties agree that the settlement, the terms of the Agreement, and all negotiations to reach the Agreement shall remain confidential and shall not be disclosed except as required by law; an order of the court; or state or federal tax, probate, or other legal reporting or accounting requirement; or to enforce the provisions of this Agreement. The Settling Parties agree that the confidentiality obligations shall extend to the pleadings and hearings necessary to secure approval of this Agreement, subject to such level of disclosure as is necessary in order to obtain approval. Therefore, all such pleadings will be filed with necessary redactions and/or under seal or in conformity with such confidentiality procedures as the Court may approve in connection with this Agreement or in the Liquidation Proceeding.

10. Binding Effect. This Agreement, and all covenants and releases set forth herein, shall be binding upon and shall inure to the benefit of the Settling Parties, their legal successors, heirs, assigns, partners, representatives, agents, attorneys, officers, directors, members and shareholders.

11. Governing Law. This Agreement shall be construed in the accordance with, and be deemed govern by, the laws of the State of New Hampshire.

12. Dismissal of Litigation. Within ten days of Liquidator's counsel's receipt of the Court's approval of this Agreement, the Liquidator shall cause its counsel to file a Voluntary Non-Suit of its claims against Marshall with the Merrimack County Superior Court with regard to the Litigation.

13. Entire Agreement. The undersigned each acknowledge and represent that no promise or representation not contained in this Agreement, or any exhibit hereto, has been made to them and that this Agreement, together with any exhibits hereto, contains the entire understanding between the parties and contains all terms and conditions pertaining to the within compromise and settlement of the dispute referenced herein. The undersigned further acknowledge that the terms of this Agreement are contractual and not a mere recital.

14. Costs and Fees. Each party will bear its own costs and expenses, including attorneys' fees, incurred in connection with the Litigation and controversies specifically identified herein.

15. Representations and Warranties. Each of the Settling Parties represents and warrants as follows, which representations and warranties shall survive the execution and delivery of this Agreement:

a. Each party has received or has had the opportunity to receive independent legal advice from attorneys of its choosing with respect to the contents and advisability of making this Agreement;

b. Neither party executing this Agreement has relied upon any statement, representation or promise, oral or written, of any other party of this Agreement except as expressly set forth herein;

c. No representation, warranty, promise or condition, whether written or oral, that is not specifically incorporated herein, shall be binding upon any party hereto; and,

d. Each party executing this Agreement has the authority to do so.

16. Amendments. This Agreement cannot be modified or amended in any way, except by one or more writings signed by the party to be charged herewith.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.

GLENN A. PERLOW, BANK COMMISSIONER
FOR THE STATE OF NEW HAMPSHIRE, as
Successor Liquidator for Noble Trust Company and
as Successor to the Rights of Balcarres Group, LLC

Dated: 10/22/13

By: 

CLIFTON MARSHALL

Dated: 10-13-13

By: 

EXHIBIT B

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**ORDER GRANTING LIQUIDATOR'S MOTION FOR
APPROVAL OF SETTLEMENT WITH CLIFTON MARSHALL**

Upon consideration of the Liquidator's Motion for Approval of Settlement Agreement with Clifton Marshall dated February 27, 2014 (the "Motion"), pursuant to which the Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively) seeks approval of his Settlement Agreement and Mutual Release with Clifton Marshall (the "Settlement Agreement"); due written notice of the Motion having been given and served upon all creditors and other interested persons entitled thereto; the Court having reviewed the Motion, the Affidavit of Robert A. Fleury in Support of the Motion and the unredacted Settlement Agreement that was filed under seal in accordance with this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012; there being no objections made to the relief requested; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, is fair and reasonable and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, and the Settlement Agreement is approved. The Liquidator, Marshall, and all other parties are authorized to take all steps and execute all documents necessary or permitted to consummate or otherwise enter into the Settlement Agreement.

2. Court approval shall be deemed to occur on the date that this order shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.

So Ordered.

Dated: _____

Hon. Larry M. Smukler

CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.¹

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¹ Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service of the pleading on claimants and other parties in interest.

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